

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0323.01 Shelby Ross x4510

SENATE BILL 21-075

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

Tipper and Young,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING SUPPORTED DECISION-MAKING AGREEMENTS FOR**
102 **ADULTS WITH DISABILITIES, AND, IN CONNECTION THEREWITH,**
103 **AUTHORIZING SUCH AGREEMENTS AS AN ALTERNATIVE FOR OR**
104 **SUPPLEMENT TO A GUARDIANSHIP.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill allows an adult with a disability (adult) to enter into a supported decision-making agreement (agreement) with a member of the supportive community. Under the agreement, the adult authorizes the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

member of the supportive community to do any of the following:

- Provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult;
- Assist the adult in accessing, collecting, obtaining, and understanding information that is relevant to a given life decision from any person; and
- Assist the adult in communicating the adult's decisions to appropriate persons when expressly authorized by the adult.

The agreement may be in any form but is only valid if it contains certain information and is signed by the adult and the member of the supportive community in the presence of 2 or more attesting witnesses who are 18 years of age or older, or a notary public.

The bill requires any person who receives the original or a copy of the agreement to rely on the agreement. A person is not subject to criminal and civil liability and does not engage in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on an agreement.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 8 to article
3 14 of title 15 as follows:

4 **PART 8**

5 **SUPPORTED DECISION-MAKING AGREEMENT FOR**
6 **ADULTS WITH A DISABILITY**

7 **15-14-801. Legislative declaration.** (1) THE GENERAL ASSEMBLY
8 FINDS AND DECLARES THAT:

9 (a) GUARDIANSHIP AGREEMENTS CONSTITUTE ONE OF THE MOST
10 RESTRICTIVE OPTIONS AVAILABLE TO ADULTS WITH DISABILITIES AND
11 THEIR FAMILIES;

12 (b) DUE TO THEIR LIMITATIONS, FULL GUARDIANSHIPS SHOULD BE
13 EMPLOYED ONLY IN THE MOST SEVERE OF CIRCUMSTANCES;

14 (c) ADULTS WITH DISABILITIES SHOULD BE PRESUMED TO HAVE

1 THE CAPACITY TO FACILITATE THE EXERCISE OF DECISIONS REGARDING
2 THEIR DAY-TO-DAY HEALTH, SAFETY, WELFARE, OR FINANCIAL AFFAIRS;

3 (d) SUPPORTED DECISION-MAKING OFFERS AN ALTERNATIVE TO
4 GUARDIANSHIP THAT CAN ALSO BE A SUPPLEMENT TO AN EXISTING
5 GUARDIANSHIP;

6 (e) SUPPORTED DECISION-MAKING SHOULD BE CONSIDERED ONLY
7 IF A LESS RESTRICTIVE MEANS OF DECISION-MAKING HAS BEEN TRIED AND
8 FOUND INEFFECTIVE;

9 (f) SUPPORTED DECISION-MAKING ENCOURAGES ADULTS WITH
10 DISABILITIES TO BE THE MASTERS OF THEIR OWN LIVES WHILE ALSO
11 ENCOURAGING THESE ADULTS TO CREATE SUPPORTIVE COMMUNITIES,
12 THROUGH SUPPORTED DECISION-MAKING TEAMS, THAT CAN HELP THE
13 ADULTS WITH DISABILITIES MAKE INFORMED DECISIONS;

14 (g) ADULTS WITH DISABILITIES SHOULD HAVE ACCESS TO SUPPORTS
15 AND EXPERIENCES AND LEARN DECISION-MAKING SKILLS;

16 (h) ADULTS WITH DISABILITIES WHO ARE NOT UNDER A
17 GUARDIANSHIP HAVE A RIGHT TO MAKE A DECISION WITHOUT ANY
18 MEMBER OF THE SUPPORTIVE COMMUNITY; AND

19 (i) ADULTS WITH DISABILITIES SHOULD HAVE A VARIETY OF
20 FORMAL AND INFORMAL PROCESSES AVAILABLE TO MAKE DECISIONS AND
21 PREFERENCES OF CHOICES.

22 **15-14-802. Definitions.** AS USED IN THIS PART 8, UNLESS THE
23 CONTEXT OTHERWISE REQUIRES:

24 (1) "ADULT" MEANS AN INDIVIDUAL WHO IS EIGHTEEN YEARS OF
25 AGE OR OLDER, OR AN EMANCIPATED MINOR.

26 (2) "ASSIST" MEANS HELPING AN ADULT WITH A DISABILITY WEIGH
27 THE PROS AND CONS OF A DECISION AND UNDERSTAND THE POSSIBLE

1 OUTCOMES OF MAKING SUCH A DECISION.

2 (3) "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT
3 THAT SUBSTANTIALLY LIMITS ONE OR MORE MAJOR LIFE ACTIVITIES OR A
4 RECORD OF SUCH AN IMPAIRMENT.

5 (4) "MEMBER OF THE SUPPORTIVE COMMUNITY" MEANS A PERSON
6 WHOM THE RESPONDENT, WARD, OR PROTECTED PERSON, FOR THE
7 ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE FILING OF A PETITION
8 PURSUANT TO SECTION 15-14-304 OR 15-14-403, HAS TRUSTED TO ENGAGE
9 IN SUPPORTED DECISION-MAKING AND WHO MAY HAVE RELEVANT
10 INFORMATION ABOUT THE RESPONDENT'S, WARD'S, OR PROTECTED
11 PERSON'S DESIRES AND PERSONAL VALUES.

12 (5) "SUPPORTED DECISION-MAKING" MEANS THE WAY AN ADULT
13 WITH A DISABILITY HAS MADE OR IS MAKING DECISIONS BY USING FRIENDS,
14 FAMILY MEMBERS, PROFESSIONALS, AND OTHER PEOPLE THE ADULT WITH
15 A DISABILITY TRUSTS TO:

16 (a) HELP UNDERSTAND THE ISSUES AND CHOICES;

17 (b) ANSWER QUESTIONS;

18 (c) PROVIDE EXPLANATIONS IN A LANGUAGE THE ADULT WITH A
19 DISABILITY UNDERSTANDS;

20 (d) COMMUNICATE THE ADULT WITH A DISABILITY'S DECISION TO
21 OTHERS, IF NECESSARY; OR

22 (e) FACILITATE THE EXERCISE OF DECISIONS REGARDING THE
23 ADULT WITH A DISABILITY'S DAY-TO-DAY HEALTH, SAFETY, WELFARE, OR
24 FINANCIAL AFFAIRS.

25 (6) "SUPPORTED DECISION-MAKING AGREEMENT" OR
26 "AGREEMENT" MEANS AN AGREEMENT BETWEEN AN ADULT WITH A
27 DISABILITY AND A MEMBER OF THE SUPPORTIVE COMMUNITY, ENTERED

1 INTO PURSUANT TO THIS PART 8.

2 **15-14-803. Supported decision-making agreement - term.**

3 (1) AN ADULT WITH A DISABILITY MAY VOLUNTARILY, WITHOUT UNDUE
4 INFLUENCE OR COERCION, ENTER INTO A SUPPORTED DECISION-MAKING
5 AGREEMENT WITH A MEMBER OF THE SUPPORTIVE COMMUNITY. UNDER
6 THE AGREEMENT, THE ADULT WITH A DISABILITY AUTHORIZES THE
7 MEMBER OF THE SUPPORTIVE COMMUNITY TO DO ANY OR ALL OF THE
8 FOLLOWING:

9 (a) PROVIDE SUPPORTED DECISION-MAKING, INCLUDING
10 ASSISTANCE IN UNDERSTANDING THE OPTIONS, RESPONSIBILITIES, AND
11 CONSEQUENCES OF THE ADULT'S LIFE DECISIONS, WITHOUT MAKING THOSE
12 DECISIONS ON BEHALF OF THE ADULT WITH A DISABILITY;

13 (b) PURSUANT TO SECTION 15-14-804, ASSIST THE ADULT WITH A
14 DISABILITY IN ACCESSING, COLLECTING, OBTAINING, AND UNDERSTANDING
15 INFORMATION THAT IS RELEVANT TO A GIVEN LIFE DECISION FROM ANY
16 PERSON, INCLUDING BUT NOT LIMITED TO MEDICAL, PSYCHOLOGICAL,
17 FINANCIAL, EDUCATIONAL, OCCUPATIONAL, AND SOCIAL DECISIONS;
18 TREATMENT RECORDS; HOW AND IN WHAT RELATIONSHIPS THE ADULT
19 WITH A DISABILITY CHOOSES TO ENGAGE; AND INFORMATION ABOUT HOW
20 A SUPPORTIVE COMMUNITY IS CHOSEN; OR

21 (c) ASSIST THE ADULT WITH A DISABILITY IN COMMUNICATING THE
22 ADULT'S DECISIONS TO APPROPRIATE PERSONS WHEN EXPRESSLY
23 AUTHORIZED BY THE ADULT WITH A DISABILITY.

24 (2) (a) THE SUPPORTED DECISION-MAKING AGREEMENT IS
25 EFFECTIVE UNTIL TERMINATED BY EITHER THE ADULT WITH A DISABILITY
26 OR THE MEMBER OF THE SUPPORTIVE COMMUNITY, OR BY THE TERMS OF
27 THE AGREEMENT. EITHER PARTY MAY CHOOSE TO TERMINATE THE

1 AGREEMENT AT ANY POINT WITHOUT PROVIDING ANY WRITTEN OR VERBAL
2 NOTICE OF THE TERMINATION TO THE OTHER PARTY.

3 (b) THE SUPPORTED DECISION-MAKING AGREEMENT IS
4 TERMINATED IF:

5 (I) ADULT PROTECTIVE SERVICES FINDS THAT THE ADULT WITH A
6 DISABILITY HAS BEEN MISTREATED, AS DEFINED IN SECTION 18-6.5-102
7 (10.5), BY THE MEMBER OF THE SUPPORTIVE COMMUNITY;

8 (II) THE MEMBER OF THE SUPPORTIVE COMMUNITY IS:

9 (A) SUBSTANTIATED IN A CASE OF MISTREATMENT OF THE ADULT
10 WITH A DISABILITY, ANY OTHER PERSON WITH A DISABILITY, OR ANY
11 AT-RISK PERSON, AS DEFINED IN SECTION 18-6.5-102 (4.5);

12 (B) CONVICTED OF A CRIME AGAINST AN AT-RISK PERSON
13 PURSUANT TO SECTION 18-6.5-103, OR OTHERWISE INTENTIONALLY
14 CAUSED PHYSICAL HARM TO ANOTHER; OR

15 (C) CONVICTED OF A FINANCIAL CRIME.

16 (3) A SUPPORTED DECISION-MAKING AGREEMENT CANNOT BE USED
17 AS EVIDENCE OF INCAPACITY OF THE ADULT WITH A DISABILITY.

18 **15-14-804. Access to personal information.** (1) THE MEMBER OF
19 THE SUPPORTIVE COMMUNITY IS ONLY AUTHORIZED TO ASSIST THE ADULT
20 WITH A DISABILITY IN ACCESSING, COLLECTING, OR OBTAINING
21 INFORMATION THAT IS RELEVANT TO A DECISION AUTHORIZED PURSUANT
22 TO THE SUPPORTED DECISION-MAKING AGREEMENT.

23 (2) IF THE MEMBER OF THE SUPPORTIVE COMMUNITY ASSISTS THE
24 ADULT WITH A DISABILITY IN ACCESSING, COLLECTING, OR OBTAINING
25 FINANCIAL OR PERSONAL INFORMATION, INCLUDING PROTECTED HEALTH
26 INFORMATION PURSUANT TO THE FEDERAL "HEALTH INSURANCE
27 PORTABILITY AND ACCOUNTABILITY ACT OF 1996", PUB.L. 104-191, AS

1 AMENDED, OR EDUCATIONAL RECORDS PURSUANT TO THE FEDERAL
2 "FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974", 20 U.S.C.
3 SEC. 1232g, AS AMENDED, THE MEMBER OF THE SUPPORTIVE COMMUNITY
4 SHALL ENSURE THE INFORMATION IS KEPT PRIVILEGED AND CONFIDENTIAL,
5 AS APPLICABLE, AND IS NOT SUBJECT TO UNAUTHORIZED ACCESS, USE, OR
6 DISCLOSURE.

7 (3) THE EXISTENCE OF A SUPPORTED DECISION-MAKING
8 AGREEMENT DOES NOT PRECLUDE AN ADULT WITH A DISABILITY FROM
9 SEEKING PERSONAL INFORMATION WITHOUT THE ASSISTANCE OF THE
10 MEMBER OF THE SUPPORTIVE COMMUNITY.

11 **15-14-805. Agreement requirements - signature - witnesses or**
12 **notary public.** (1) A SUPPORTED DECISION-MAKING AGREEMENT MAY BE
13 IN ANY FORM BUT IS VALID ONLY IF IT CONTAINS, AT A MINIMUM, THE
14 FOLLOWING:

- 15 (a) THE NAME OF THE ADULT WITH A DISABILITY;
- 16 (b) THE NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS
17 OF THE MEMBER OF THE SUPPORTIVE COMMUNITY, IF APPLICABLE;
- 18 (c) A LIST OF DECISIONS THE MEMBER OF THE SUPPORTIVE
19 COMMUNITY MAY ADVISE THE ADULT WITH A DISABILITY ON;
- 20 (d) A DESCRIPTION OF THE MEMBER OF THE SUPPORTIVE
21 COMMUNITY'S DUTIES, INCLUDING, AT A MINIMUM, THE DUTY TO:
 - 22 (I) PROVIDE UNBIASED INFORMATION THAT IS IN THE BEST
23 INTEREST OF THE ADULT WITH A DISABILITY;
 - 24 (II) RESPECT THAT THE FINAL AND ULTIMATE DECISION IS THE
25 ADULT WITH THE DISABILITY'S AND NOT THE MEMBER OF THE SUPPORTIVE
26 COMMUNITY'S;
 - 27 (III) NOT COERCE OR MANIPULATE THE ADULT WITH THE

1 DISABILITY INTO MAKING ANY DECISION; AND

2 (IV) PROVIDE THE MOST UP-TO-DATE AND RELEVANT
3 INFORMATION TO THE ADULT WITH THE DISABILITY BASED ON ALL THE
4 AVAILABLE AND KNOWN INFORMATION THE MEMBER OF THE SUPPORTIVE
5 COMMUNITY HAS.

6 (e) A NOTICE THAT ANY PERSON WHO IS RELYING ON THE
7 SUPPORTED DECISION-MAKING AGREEMENT AND HAS CAUSE TO BELIEVE
8 THAT THE ADULT WITH A DISABILITY IS BEING MISTREATED, AS DEFINED IN
9 SECTION 18-6.5-102 (10.5), BY THE MEMBER OF THE SUPPORTIVE
10 COMMUNITY, SHALL REPORT THE ALLEGED MISTREATMENT TO ADULT
11 PROTECTIVE SERVICES; AND

12 (f) THE DAY, MONTH, AND YEAR THE AGREEMENT WAS ENTERED
13 INTO.

14 (2) A SUPPORTED DECISION-MAKING AGREEMENT MUST BE SIGNED
15 VOLUNTARILY, WITHOUT COERCION OR UNDUE INFLUENCE, BY THE ADULT
16 WITH A DISABILITY AND THE MEMBER OF THE SUPPORTIVE COMMUNITY IN
17 THE PRESENCE OF TWO OR MORE ATTESTING WITNESSES WHO ARE
18 EIGHTEEN YEARS OF AGE OR OLDER, OR A NOTARY PUBLIC.

19 **15-14-806. Reliance on agreement - limitation of liability.**

20 (1) A PERSON WHO RECEIVES THE ORIGINAL OR A COPY OF THE SUPPORTED
21 DECISION-MAKING AGREEMENT SHALL RELY ON THE AGREEMENT.

22 (2) A PERSON IS NOT SUBJECT TO CRIMINAL OR CIVIL LIABILITY
23 AND DOES NOT ENGAGE IN PROFESSIONAL MISCONDUCT FOR AN ACT OR
24 OMISSION IF THE ACT OR OMISSION IS DONE IN GOOD FAITH AND IN
25 RELIANCE ON A SUPPORTED DECISION-MAKING AGREEMENT.

26 **SECTION 2. Act subject to petition - effective date.** This act
27 takes effect at 12:01 a.m. on the day following the expiration of the

1 ninety-day period after final adjournment of the general assembly; except
2 that, if a referendum petition is filed pursuant to section 1 (3) of article V
3 of the state constitution against this act or an item, section, or part of this
4 act within such period, then the act, item, section, or part will not take
5 effect unless approved by the people at the general election to be held in
6 November 2022 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.